Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

NO. 74-1628

BERNARD KORZEN
COUNTY TREASURER AND EX-OFFICIO
COUNTY COLLECTOR OF COOK COUNTY
RE 1971 AND 1972 REAL ESTATE TAXES
Appellee

versus

JOHN A. HUTTER
Appellant

APPEAL FROM
THE APPELLATE COURT OF ILLINOIS

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1975
NO. _____

BERNARD KORZEN
COUNTY TREASURER AND EX-OFFICIO
COUNTY COLLECTOR OF COOK COUNTY
Appellee

versus

JOHN A. HUTTER

Appellant

APPEAL FROM
THE APPELLATE COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

1. (a) The Opinion of the Court, complete, is attached as appendix hereto.

(b) The Appellant filed objections to the Application of Appellee for judgement and order of sale of Appellants real estate for unpaid real estate taxes for the years 1971 and 1972.

(i) In the trial court, the collector moved to dismiss the objections to 1971 and 1972 real estate taxes because Hutter failed to pay said taxes in full under protest as required by (Ill. Rev. Stat. 1971 Ch 120, p 716).

Hutter claimed that this statute is repugnant to both the Illinois and United States Constitution and violates his right to due process.

Hutter also contended that Article 14.4 (b) of the Illinois Constitution of 1970 violates the Federal Constitution's guarantee of equal protection of the law in that Article IX p 4 (b) permits the classification of real property to the extent that the highest class may be taxed at a rate two and one-half times the lowest.

The trial court dismissed Hutter's objections and he appealed to the Appellate Court of Illinois, which affirmed the order of the lower court.

(ii) This appeal is from the decision of the Appellate Court of Illinois dated April 7, 1975.

The notice of appeal was filed June 6, 1975 in the Appellate Court of Illinois.

(iii) This appeal is filed in accordance with Paragraph 125 (2) or and other provisions of the rule which provides appeal where: "Validity of the Statute of any State on grounds of it being repugnant to the Constitution, treaties or laws of the United States and the decision in favor of its validity."

(IV) This appeal comes squarely within above rule.

The following cases are applicable:

Metlakatla Indian Community, Annette Island Res. v. Egan Alaska 1960, 80 S.Ct. 821 363 U.S. 555 4 L Ed 2d 1897.

Young v. Ragen Ill 1949, 69 S Ct 1073, 337 U.S. 235, 93L. Ed 333.

Bantam Books Inc. v. Sullivan R.I. 1963 83 S Ct 631, 372 U.S. 58 9L. Ed. 2d 584.

Winters v. People of State of N.Y., N.Y. 1948 68 S. Ct. 665 U.S. 507 92 L. Ed. 840.

(V) The validity of the following statutes of the State of Illinois are involved.

Illinois revised statutes Chapter 120 Section 75 (1971) and Paragraph 716.

This appears in full detail in the Brief and Argument of Appellant – Appellee (Statutes Involved).

Also Article IX Paragraph 4 (b) of the Illinois Constitution of 1970.

"Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment rate of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county."

(c) The questions presented by the appeal are:

(1) Is the requirement of Illinois Revised Statute

Ch. 120 Paragraph 675 and Paragraph 716 (1971) repugnant to the Constitution of the United States and its amendments. (Due process denied) Hutter denied his day in court.

(2) Does Article IX Paragraph 4 (b) of the Illinois Constitution (1970) deny equal protection of the law? (Permits classification of real estate to the extent that the highest class may be taxed at a rate 2½ times greater than the lowest.)

(d) A brief statement of the case is as follows: As is customary every year, Hutter presented his case to the Assessor with income tax and other requested data. The Assessor refused to change his assessment even though it was some 100% higher than the amount set as just and fair by a Circuit Court, and approved by the States Attorney of Illinois.

Next the annual appearance before the Board of Appeals. The examining agent reviewing the case found the taxes resulting from the assessment amounted to 70% of the gross average income of the property (75 yrs. old) and that the remaining income could not pay for electric, gas and fuel oil. He said that the assessed valuation was so high and out of line compared with the income formula he was instructed to use, that he did not dare to make an adjustment so he would pass the buck to the board members, who of course refused to make any adjustment.

The only avenue open to Hutter was to file an objection to the sale of his property. He had no money to pay the exorbitant taxes under protest and so was denied his day in court. By this cosy manipulation the Assessor can confiscate any piece of property.

While assessing Hutter 150% he found it expedient to assess the John Hancock building 7½% of its $100,000,000.00 value. This example represents a common occurrence faced by the average taxpayer in Illinois.

In the Circuit Court of Cook County, County Division in Misc. No. 72-30 Objection No. 531 1971 taxes and 73-27 Objection No. 722, upon Collector's motion to dismiss, over the objections of Hutter on Constitutional grounds, the court dismissed the objections (see appendix) (January 31, 1974).

In the Appellate Court cases No's 60383-4, Hutter raised the same constitutional questions in pleadings (Brief and Argument). The court affirmed the dismissal by the lower court, after reviewing the appeal. (See decision in appendix.)

The court did not give any specific reason except to quote Illinois case after case in support of its opinion.

The pleadings and judgement of the Appellate Court cite many cases where the Supreme Court of Illinois held that these provisions of the Constitution of Illinois and the statutes involved were constitutional. However no decisions of the Supreme Court of the United States find that these are not in violation of the Federal Constitution.

(e) Both of the above problems are of prime basic interest to all of the owners of real property in Illinois and a definitive decision by this court is essential if the basic constitutional rights of the people of Illinois are to be protected.

There can be no freedom without the right of private property.

The Constitution must protect everyone or in the end it will protect no one.

The power of local government and political control over the courts and legislature has become so great that the protective rights of the people under the constitution have been all but nullified.

In the weeks ahead our very form of government will be endangered. People are losing confidence in our government and constitution. Will this court help to protect us?

The appellants pray the court will grant justice.

Respectfully submitted,
John A. Hutter
Attorney Appellant

APPENDIX

60383)
60384)

IN THE MATTER OF THE APPLICATION OF BERNARD KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE TAXES REMAIN DUE AND UNPAID FOR THE YEARS 1971 AND 1972 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEARS 1971 AND 1972.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
Applicant-Appellee,	)	
v.	)	HONORABLE ROBERT J. DEMPSEY, PRESIDING
JOHN A. HUTTER,	)	
Objector-Appellant.	)	

Mr. JUSTICE EGAN delivered the opinion of the court:

The objector, John A. Hutter, failed to pay real estate taxes assessed against his property for 1971 and 1972; and the County Collector applied for judgment and order of sale of the property to satisfy the delinquent taxes. Hutter filed objections, which the court dismissed on the Collector's motion on the ground that the objector had failed to pay the taxes

under protest before filing his objections as required under the Revenue Act. (Ill. Rev. Stat. 1971, ch. 120, p.716.) The objector contends that the payment under protest requirement of the statute violates his right to due process under the Federal constitution; he also contends that Article IX, p.4(b) of the Illinois constitution of 1970 violates the Federal constitution's guarantee of equal protection of the law in that Article IX, p.4 (b) permits the classification of real property to the extent that the highest class may be taxed at a rate two and one-half times greater than the lowest. In the trial court, the objector's claims were that he had not received notice of any increase in assessment and that the assessments were excessive and, consequently, constructively fraudulent. He did not raise the two constitutional arguments he raises here, but the Collector has made no point of waiver and neither will we.

The objector has filed a two-page brief in this court citing no cases in support of his argument. The Collector has not called our attention to any case dealing expressly with the constitutionality of this or any similar statute but has cited a line of cases holding that the statute provides an adequate remedy at law and that, therefore, injunctive relief was not available under the factual setting of those particular cases.

The history and purpose of the payment under protest provision of the statute are set out in People ex rel. Sweitzer v. Orrington Co., 360 Ill. 289, 195 N.E. 642. The court noted that confusion had existed over the meaning of "payment of taxes under duress." Some taxpayers, uninformed as to the legality of many of the taxes, paid illegal assessments, but recovery was barred by the confusing legal precedent. In addition, even if illegal taxes were paid under duress, there was still no statutory provision for the taxing authorities to make refunds. Consequently, the court pointed out, during the depression many taxpayers organized tax strikes and filed blanket objections creating a "chaotic condition in revenue collections." Immediate legislation was a necessity, and the amendatory act of 1933

provided that the taxpayer must pay under protest and that the collector must refund the tax if the objection was upheld. The court observed that the purpose of the amendment was to "facilitate the collection of taxes and to protect the taxpayer."

Many cases followed from which the rule evolved that the 1933 amendment provided an adequate remedy at law which the taxpayer must pursue in all cases except where the tax is unauthorized by law or where it is levied upon property exempt from taxation. (Ames v. Schlaeger, 386 Ill. 160, 53 N.E. 2d 937; Goodyear Rubber Co. v. Tierney, 411 Ill. 421, 104 N.E. 2d 222; Lackey v. Pulaski Drainage Dist., 4 Ill.2d 72, 122 N.E. 2d 257; and Lakefront Realty Corp. v. Lorenz, 19 Ill.2d 415, 167 N.E.2d 236.) The rule was again discussed in Clarendon Associates v. Korzen, 56 Ill.2d 101, 107, 108, 306 N.E.2d 299:

> "This rule requires that, other than in cases involving the two exceptions, a special ground for equitable jurisdiction, such as fraudulently excessive assessment, must exist and that an adequate remedy at law must not be available.
>
> "There will be cases of fraudulently excessive assessments where the remedy at law will not be adequate and injunctive relief should then be available. However, these are not such cases."

The procedural effect of all these cases is that the statute and other traditional remedies provide all taxpayers who have not paid voluntarily with the right to redress any wrong imposed by tax collecting authorities. And, we judge, the statute is not rendered unconstitutional because the taxpayer is required to pay first and litigate later. In Dodge v. Osborn, 240 U.S. 118, 122, 36 S.Ct. 275, 60 L.Ed. 557, the principal issue was whether the taxpayer could restrain the collection of the income tax or whether he must pursue a statutory remedy which required payment of the tax, an appeal to the Commissioner of Internal Revenue and a suit for recovery of the tax if refused by the

60383)
60384)

Commissioner. The Supreme Court held that injunctive relief was not available. A claim that the statutory procedure denied the taxpayer due process was answered quite succinctly:

> "There is a contention that the provisions requiring an appeal to the Commissioner of Internal Revenue after payment of the taxes and giving a right to sue in case of his refusal to refund are wanting in due process and therefore there is jurisdiction. But we think it suffices to state that contention to demonstrate its entire want of merit."

And in Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 595, 599, 51 S.Ct. 608, 75 L.Ed. 1289, it was held:

> "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained.
>
> "The right of the United States to exact immediate payment and to relegate the taxpayer to a suit for recovery, is paramount."

The objector's other contention that Article IX, p.4(b) of the 1970 Illinois constitution violates the equal protection provision of the Federal constitution because it permits classification of property for the purpose of taxation has been answered adversely to the objector in People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 272-274, 319 N.E.2d 55. For these reasons the order of the circuit court is affirmed.

ORDER AFFIRMED.

GOLDBERG, J. and SIMON, J. concur.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION

IN THE MATTER OF THE APPLICATION OF BERNARD J. KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE GENERAL TAXES REMAIN DUE AND UNPAID FOR THE YEAR 1970 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEAR 1971	Misc. No. 72-38 Obj. No. 531

ORDER

THIS CAUSE coming on to be heard on the Collector's Motion to Dismiss the objection for the reason that the Objector has failed to comply with the requirements of Section 675, Chapter 120, Illinois Revised Statutes, in that it has not paid any amount of its 1971 Real Estate Taxes under protest. Upon hearing arguments of counsel and the court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Collector's Motion to Dismiss be and the same is hereby granted.

2. That judgment be and the same is hereby entered in favor of the People of the State of Illinois and against Tract described in the objection filed herein for the full amount of the 1971 general real estate taxes plus interest.

3. There is no just reason to delay the enforcement of this order or appeal therefrom.

ENTER:
ASSOCIATE JUDGE ROBERT J. DEMPSEY

ENTERED

DATED: _____

Appellate Court of Illinois No. 60383
60384

In The matter of the application of the County Treasurer for judgement and sale of unpaid taxes for the years 1971 and 1972.

Applicant-Appellee

Vs.

John Hutter

Objector-Appellant

Notice Of Appeal

Notice is hereby given, that the appellant, John A. Hutter appeals the entire decision of the Appellate Court of Illinois dated April 9, 1975, to the Supreme Court of the United States.

This appeal is taken under paragraph (2) of rule 1257 and or other pertinent rules which provide in general that where the "Validity of a statute of any state on grounds of it being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its Validity."

Signed _____
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Supreme Court, U. S.
FILED
JUL 23 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1975

No. 74-1628

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Appellee,

vs.

JOHN A. HUTTER,

Appellant.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS

MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1975

No. 74-1628

APPLICATION OF BERNARD J. KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE TAXES REMAIN DUE AND UNPAID FOR THE YEARS 1971 AND 1972 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEARS 1971 AND 1972,

Appellee,

VS.

JOHN A. HUTTER,

Appellant.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS

MOTION TO DISMISS

The appellee, Bernard J. Korzen, moves this Honorable Court to dismiss this appeal for all or any one of the following reasons:

1. This Court has no jurisdiction to hear the present case;

2. There is no substantial federal question presented to This Court.

ARGUMENT

I.

(a)

THIS COURT LACKS JURISDICTION IN THAT THE APPEAL IS NOT IN CONFORMITY TO FEDERAL STATUTE.

The appellant has failed to fulfill the threshold requirement of appealing a judgment entered by the highest state court in which a decision could be had. The Illinois Appellate Court was not the last state court in which the decision of the questions presented could be had within the meaning of 28 U.S.C. § 1257.

The test of finality is whether the appellate record indicates that the order of the reviewing court has in fact fully adjudicated the issues and that the adjudication is not subject to further review by a state court. A state appellate court's judgment is final when, after an application for review by the state's highest court, the review ends the litigation so that nothing remains to be done by the lower court except the ministerial act of entering the judgment on remittitur. *Department of Banking, State of Nebraska v. Pink*, 317 U.S. 264, 268, 63 S.Ct. 233, 235, 87 L.Ed. 254, rehearing denied, 318 U.S. 802, 63 S.Ct. 890, 87 L.Ed. 1166 (1942). No decision of a state court should be brought for review either by appeal or certiorari until the possibilities afforded by state procedure for its review have been exhausted. *Gorman v. Washington University*, 316 U.S. 98, 100, 62 S.Ct. 962, 963. 86 L.Ed. 1300 (1942).

Here, the decision appealed from was entered on April 7, 1975, by the Illinois Appellate Court. *Korzen v.*

Hutter, 27 Ill. App.3d 634, 327 N.E.2d 138 (1975). Further state appellate procedure available to the appellant was not exhausted. The rules of procedure adequately enumerate the methods of further appeal. Ill. Rev. Stat. 1973, ch. 110A. Rules 315, 316, 317. Pursuant to Illinois Supreme Court Rules, the appellate mandate is stayed automatically when a party files a petition for review in the Illinois Supreme Court. Ill. Rev. Stat. 1973, ch. 110A, Rule 368(b). On July 8, 1975, without intervention by the Illinois Supreme Court, the mandate of the Illinois Appellate Court was transmitted to the Circuit Court of Cook County. (A certified copy is attached hereto as Exhibit A.). Hence, appellant has failed to file for review in the highest Illinois State Court.

The appellant, for the review of a state court decision, has failed to show affirmatively that This Court has jurisdiction. *Memphis National Order Co. v. Beeler*, 315 U.S. 649, 651, 62 S.Ct. 857, 859, 86 L.Ed. 1090, (1946). Therefore This Court is without jurisdiction and the application must be dismissed.

II.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED TO THIS HONORABLE COURT ON APPEAL FROM THE ILLINOIS APPELLATE COURT.

(a)

Appellant Challenges The Constitutionality Of The Prepayment Under Protest Requirement Under The Illinois Revenue Act.

The appellant challenges on due process grounds the constitutionality of the payment under protest procedure required by the Illinois Revenue Act of 1939. Ill. Rev. Stat. 1971, ch. 120, §§ 675, 715. The appellant failed to pay real property taxes assessed against his property for

the years 1971 and 1972. The county collector applied for judgment and an order of sale of the property to satisfy the delinquent taxes. Objections were filed by the appellant. The objections were dismissed on the county collector's motion for failure to pay the taxes under protest.

The statute in question is Illinois Revised Statutes, Chapter 120, Section 675 (1971) which provides:

> "If any person desires to object pursuant to Section 235 of this Act to all or any part of real property tax for the year, for any reason other than that the real estate is not subject to taxation, *he shall first pay all of the tax installments due*, and such payment shall be accompanied by a writing, substantially in the following form:
>
> PAYMENT UNDER PROTEST . . ."
>
> (Emphasis supplied)

The principal question before This Court is whether there is a federal question involved such that This Court should take jurisdiction of the cause (assuming arguendo This Court may take jurisdiction). It is appellee's contention that there is no federal question here in that there is not a violation of the Due Process Clause of the Fourteenth Amendment.

There is a clear analogy between the local system here employed and that employed by the Federal Internal Revenue Service pursuant to the Internal Revenue Code. The United States District Courts and the United States Court of Claims are open to taxpayers wishing to challenge their federal income tax "assessments." The right to enter one of these courts is predicated upon the prepayment of the tax. Constitutional due process requirements hardly invalidate this system. As declared by Mr. Justice Brandeis in *Phillips v. Commissioner of*

Internal Revenue, 283 U.S. 589, 595-7, 51 S.Ct. 608, 75 L.Ed. 1289:

> "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a latter judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained. (citations omitted) Property rights must yield provisionally to governmental need. . . .
>
> Where only property rights are involved, mere postponement of judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."

See: *Mitchell v. W. T. Grant*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed. 406 (1974).

There is a compelling state interest involved here to sustain and assure adequate revenue for the functioning of local government. State and local governments rely on revenue for their tax base.

Consistent with this is the absolute necessity that state governmental agencies be assured of a method of tax collection which assures that the revenue will be forthcoming at designated periods of time. The prepayment of taxes before an objection to the tax will be entertained accomplishes this goal. It also allows the local government to be assured of an adequate revenue source. More importantly, it allows state taxing agencies to know in advance the number of challenges, or objections, which will be made to the imposition of such tax. The local government is, consequently, more able to plan its future expenditures in a more effective and efficient manner, benefiting the community as a whole.

The taxpayer has two remedies available to him. The first is to challenge the assessment initially. If this is done the taxpayer is entitled to and is given a hearing at that time. Ill. Rev. Stat. 1971, ch. 120, § 593 et. seq. This hearing is before an administrative board, where the taxpayer can challenge the amount of the assessment. Assuming at this point that the taxpayer fails to avail himself of his right to a hearing or he is not satisfied with the results of the hearing he pays under protest the assessed tax when it later comes due and initiates his day in court. It is submitted that the employment of the hearing procedure followed by a requirement of prepayment closely parallels the federal system and that all requirements under due process are thus maintained.

This Court has on numerous occasions had the opportunity to examine the issue of prepayment of monies as a condition precedent to some action. In *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541, 69 S.Ct. 1221 (1949) this Court upheld a New Jersey statute requiring the posting of security to cover the reasonable expenses of the litigation in shareholder derivative suits as against a due process challenge. The opinion stated: ". . . it is within the power of a state to close its courts to this type of litigation if the condition of reasonable security is not met." *Supra* at p. 1228. And in an earlier case, *Jones v. Union Guano Co.*, 264 U.S. 171, 44 S.Ct. 280 (1924) was decided, stating:

> "The Fourteenth Amendment does not prevent a state from prescribing a reasonable and appropriate condition precedent to the bringing of a suit of a specified kind or class so long as the basis of the distinction is real, and the condition imposed has a reasonable relation to a legitimate object." *Supra* 264 U.S. at 181.

It is submitted that there is no more "legitimate object" than securing the revenue base of a local governmental unit. This money is a tax which is due and owing. In the event the tax is improper for one reason or another, that part or all of it which is improperly levied is returned to the taxpayer. No portion of the money is retained to provide for the expenses of the litigation or the various administrative costs involved. Compare: *Schilb v. Kuebel*, 404 U.S. 357, 30 L.Ed.2d 502, 92 S.Ct. 479 (1971).

No substantial question of constitutionality is raised in the present case. A compelling state interest is being served by the condition precedent here imposed. This Court has long recognized that the state legislatures have the power to place such conditions upon access to the state courts when a compelling state interest is involved and the condition is a reasonable one. Here both the condition and the purpose are reasonable. The appellant here is in no different position than thousands of other real property owners in Cook County, Illinois or throughout this state and many other states having similar statutes.

(b)

The Classification Of Real Property For Purposes Of Taxation Is Constitutionally Permissible.

The appellant challenges the tax scheme of Cook County, Illinois, authorized by Article IX, Section 4(b) of

the Illinois Constitution.[1] The provision provides that certain counties (based on population) may classify real property and tax or assess the highest class of property two and one-half times the lowest class of property within the county.

The ground rules applicable to a challenge to a revenue classification on constitutional grounds have long been established.

> "The test is whether the difference in treatment is an invidious discrimination. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled the States have large leeway in making classifications and drawing lines which, in their judgment produce reasonable systems of taxation (citations omitted)."

Lake Shore Auto Parts Co. v. Lehnhausen, 410 U.S. 356, 359 (1973).

This Court has recently declared:

> ". . . we stand on familiar grounds when we continue to acknowledge that the Justices of this court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. . . . No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex area, in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny, lest all local fiscal schemes become subjects of criticism under the equal protection clause." *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 40-42 (1973).

[1] Section 4. REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

As noted in the memorandum opinion of the Appellate Court, the Illinois Supreme Court has considered the validity of the classification provisions authorized by the Illinois Constitution. *People ex rel. Kutner v. Cullerton*, 58 Ill.2d 266, 272, 274, 319 N.E.2d 55 (1974). Total reliance was placed on constitutional standards enumerated by this court. Thus, no substantial federal question is presented for review of this cause.

CONCLUSION

BERNARD J. KORZEN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois, requests This Court to dismiss this appeal.

Respectfully submitted,

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Of Counsel

APPENDIX

Exhibit A

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Present The Honorable Mayer Goldberg Presiding Judge

Present The Honorable Edward J. Egan Judge.

Present The Honorable Seymour F. Simon Judge.

Leslie V. Beck
Clerk.

Richard J. Elrod
Sheriff.

In the Matter of the Application of
Bernard J. Korzen, as County Treasurer and
Ex-Officio County Collector of Cook County
for Judgment and Order of Sale Against Lands
and Lots Upon Which the General Taxes Remain
Due and Unpaid for the Year 1972, and for
Judgment Fixing the Correct Amount of any
Tax Paid Under Protest for the Year 1972.
No. 60384 vs. Appellees

John A. Hutter and Clare Hutter,

Appellants

Appeal from the Circuit Court
of Cook County
(No.)
General No. 73-27

Objection No. 722

AFFIRMING ORDER

The order appealed from of the Circuit Court of Cook County is AFFIRMED xxxd

xxxx

Supreme Court, U. S.
FILED
AUG 23 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1975

No. 74-1628

APPLICATION OF BERNARD J. KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE TAXES REMAIN DUE AND UNPAID FOR THE YEARS 1971 AND 1972 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEARS 1971 AND 1972,

Appellee,

vs.

JOHN A. HUTTER,

Appellant.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS

OPPOSITION TO MOTION TO DISMISS

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KORZEN v HUTTER No. 74-1628
OPPOSITION TO MOTION TO DISMISS
ARGUMENT
I
(a)

This is the third time appellant Hutter has asked this Court to protect his right to due process under Amendment 14 and make a definitive final determination whether the statutes and provisions of the State of Illinois Constitution outlined, are repugnant to the Constitution of the United States.

In one Case No. 71-1419 this Court denied the appeal because delay in mail, and the serious illness of Mrs. Hutter, (who later died as a result) caused by the harassment of the City of Chicago resulted in the appeal brief reaching the Court a few days late (the clerk was called and told before expiration of filing date). Justice Douglass dissented.

In the other Case No. 72-1114, the Court Clerk pleaded with the States Attorney to file a motion to dismiss indicating in effect that the Court could then dismiss the appeal and not have to make a decision on the constitutionality of the State Statute.

The States Attorney complied claiming that Hutter had not appeared before the County Board of Appeals (the Board members told Hutter not to make an appeal during the 4 years of the quadrennial assessment for they would make no changes in the interim) Hutter complied. The Court dismissed the appeal.

This Court erred in doing this on Page 6 of Motion to Dismiss appellee states: "assuming at this point that the taxpayer fails to avail himself of his right to a hearing . . . he pays under protest the assessed tax when it later comes due and initiates his day in court".

Therefore this Court ignored the only question involved namely: Must the tax be paid in full under protest before a taxpayer, Hutter, may have due process and a day in court?

In both of above cases Hutter had petitioned the Supreme Court of Illinois for leave to appeal. Each time the leave was denied (see above appeals) (the case numbers may be out of order).

In a petition for a writ of certiorari in No. 72477 Hutter asked the writ to be directed to the Supreme Court of Illinois, which denied the leave to appeal. Your clerk criticized Hutter and said it must be directed against the court that made the final decision (the Appellate Court). Hutter complied with the clerk and filed a new corrected petition. So here Hutter applied the same procedure to comply.

The Supreme Court of Illinois and all lower courts have made it very clear that they believe the Statute and Provision of the Illinois Constitution are not repugnant to the U.S. Constitution. Hutter claims they are, he pleads with this Court to decide.

II

(a)

The appellee's claim of analogy between the Illinois Statute and Phillips v Commissioner seems absurd. The taxpayer assessed himself when he made out his return. If the Commissioner thinks he was too lenient with himself he can assess an additional tax, but then the taxpayer can go to the tax court and up to this Court for a just determination. In Illinois the taxpayer has no hope of court justice unless he pays a discriminatory, confiscatory, arbitrary, punitive tax first, which Hutter was unable to do.

The cases cited by the appellee are not applicable here.

On Page 7 the motion states: "a compelling state interest is being served by the condition precedent here imposed". What compelling state interest? Hutter is also a taxpayer in Wisconsin. In both states the taxpayer may elect not to pay the taxes assessed. In the same period of time, about two years, the taxpayer may lose his property to the tax purchaser.

In Wisconsin the state finds no "compelling state interest". The taxpayer may carry his appeal up to the Wisconsin Supreme Court. This Court **must** hear all appeals – no "leave to appeal" necessary. The Court can't say "go away and don't bother us" like the Illinois Supreme Court can.

Also on Page 7, "This Court has long recognized that the state legislatures have the power to place such conditions upon access to the state courts when a compelling state interest is involved and the **condition is a reasonable one**". Wisconsin does not find it reasonable nor necessary.

(b)

Hutter and other owners of small apartment buildings are compelled to assume the tax burden of still smaller apartment owners and those who own private homes. This is plainly "insidious discrimination" and denies equal protection of the law.

On Page 9 – "The Illinois Supreme Court has considered . . . total reliance was placed on constitutional standards enumerated by this Court".

Continued Argument

For all practical purposes politically, the City of Chicago and Cook County are a single unit.

Woe to anyone who would seek the protection of the U.S. Constitution from this combine.

Hutter has done just this and the wrath of the local government has fallen upon him. He is now 76 years old. He is trying to determine whether there is any possibility that the Supreme Court will protect the constitutional rights of the slight majority who support the rest of the population. Hutter is a "Wasp" whose parents were born in the United States. There are other ethnic groups who compose the hard working producers and own small property to try and remain self sustaining as Hutter. Without private property there can be no freedom.

Local governments (by no means limited to Chicago and Cook County) act with all the surly despotism of a local Soviet commissar.

This local government has given Hutter the well known "one-two". See City v Hutter – 72447, also see Hutter v Irving Faber et al U.S. District Court for Northern District of Illinois Eastern Division No. 75-C2231, a Civil Rights conspiracy action where the receivers attorney et al acted to **prevent** the court order from being enforced.

Our bicentennial is as hand. How long will our republic survive if the public loses faith in the Constitution and this Court? The Constitution must protect everyone or it will protect no one. At the present rate how long will it be before we have a dictatorship of the right?

The Court complains of a heavy case load. Would not that case load be reduced by making a decisive finding wherever possible, rather than seeking a way to avoiding the decision in this appeal. Must Hutter start all over again for the fourth time?

Conclusion

Hutter sincerely pleads that the Court may grant him justice.

(Note this opposition delayed. Did not reach Hutter until August 18. Mail in Chicago robbed again, checks forged and cashed.)

Respectfully Submitted,

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